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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,122	08/20/2003	Robert Mark Zerhusen	8266-1126	6524

7590 02/03/2005

Intellectual Property Group
Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, IN 46204

EXAMINER

LEE, JONG SUK

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,122

Applicant(s)

ZERHUSEN ET AL

Examiner

Jong-Suk (James) Lee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-30 is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 7, 2005 has been entered.
2. The amendment filed December 8, 2004 has been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Application (JP 10-266510).

Japanese Patent Application'510 discloses a flexible side/hand rail for a step comprising a support surface/wall, a side rail including a siderail covering having a flexible body (2A2) including a flexible material having a plurality of laterally extending apertures/notches and having a central rail member aperture wherein an articulated rail member (2A1) positioned inside the flexible body through the central rail member aperture, the flexible body having a

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plurality of repeating segments along a longitudinal axis of the body, each repeating segment is pivotable relative to adjacent repeating segments as depicted in Fig. 5 (see Figs. 1-7; English translated abstract).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-3, 5-12, 14 and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cade (US 2,306,934) in view of Japanese Patent Application'510. The teachings of Japanese Patent Application'510 have been discussed above.

Cade discloses a bathtub for a patient in use in a hospital, the bathtub comprising a patient support surface (1-4, 10, 20, 24, 15), a side rail (11, 12, 13, 16) being adaptable to be coupled to the patient support (see Figs. 1-13; pg.1, right col. Lines 34-55; pg.2, left col. Lines 1-63).

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However, Cade fails to disclose or fairly suggest the side rail including a flexible body with a plurality of notches. Japanese Patent Application'510 discloses a flexible side/hand rail for a step comprising a support surface/wall, a side rail including a siderail covering having a flexible body (2A2) including a flexible material having a plurality of laterally extending apertures/notches and having a central rail member aperture wherein an articulated rail member (2A1) positioned inside the flexible body through the central rail member aperture, the flexible body having a plurality of repeating segments along a longitudinal axis of the body, each repeating segment is pivotable relative to adjacent repeating segments as depicted in Fig. 5 as discusses in paragraph no. 4.

Therefore, in view of Japanese Patent Application'510, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to replace the side rail of Cade with the flexible side rail in order to perform safe walking with a universal handrail for the patient.

7. Claims 4, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cade as modified by Japanese Patent Application'510 and further in view of Cambell, Jr. et al (US 5,875,792). The teachings of Cade modified by Japanese Patent Application'510 have discussed above.

However, The teachings of Cade modified by Japanese Patent Application'510 fails to disclose or fairly suggest the flexible material of the body is made of foam. Cambell, Jr. et al discloses a bendable foam covered rod-like article comprising of a flexible body including a

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flexible material/foam (14) and a rail member positioned inside the flexible body as depicted in Fig.1 (see col.4, lines 9-67; col.5, lines 1-17).

Therefore, in view of Cambell, Jr. et al, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to further modify the side rail of Cade, as modified by Japanese Patent Application'510 by replacing the covering with the foam material in order to protect the object to be contacted with and enhance the softness of the rail covering.

With respect to the triangular shaped in cross section for the laterally extending apertures of the flexible body, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to have a triangular cross section for the apertures of the flexible body in order to provide the more freedom of the flexibility to the body by shaping the side rail covering to be a triangular shape.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 7, 10, 11, 18 and 21 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the amended preamble limitation, “a patient support siderail” in amended claim 15, patentable weight is not given to the preamble insofar as the preamble, “patient support” is not positively recited in the body of the claim.

Allowable Subject Matter

9. Claims 27-30 would be allowable over the prior art of record.

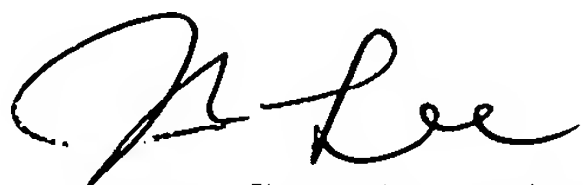
Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (703) 308-6777. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Lee /jjl
February 1, 2005


Jong-Suk (James) Lee
Primary Examiner
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